# Residency Statute and Case Law

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#### § 163-57. Residence defined for registration and voting.

- All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:
- (1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, has the intention of returning.
  - a. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that person with respect to the location of the boundary line at issue shall be controlling as the residency of that person.
  - b. If the person disputes the determination of residency, the person may request a hearing before the county board of elections making the determination of residency. The procedures for notice of hearing and the conduct of the hearing shall be as provided in G.S. 163-86. The presentation of an accurate and current determination of a person's residence and the boundary line at issue by map or other means available shall constitute prima facie evidence of the geographic location of the residence of that person.

#### Homeless Voter Provision of GS 163-57

not a traditional residence associated with real property, then the location of the usual sleeping area for that person shall be controlling as to the residency of that person.

Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address."

- (2) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another state, county, municipality, precinct, ward, or other election district of this State, for temporary purposes only, with the intention of returning.
- (3) A person shall not be considered to have gained a residence in any county, municipality, precinct, ward, or other election district of this State, into which that person comes for temporary purposes only, without the intention of making that county, municipality, precinct, ward, or other election district a permanent place of abode.
- (4) If a person removes to another state or county, municipality, precinct, ward, or other election district within this State, with the intention of making that state, county, municipality, precinct, ward, or other election district a permanent residence, that person shall be considered to have lost residence in the state, county, municipality, precinct, ward, or other election district from which that person has removed.
- (5) If a person removes to another state or county, municipality, precinct, ward, or other election district within this State, with the intention of remaining there an indefinite time and making that state, county, municipality, precinct, ward, or other election district that person's place of residence, that person shall be considered to have lost that person's place of residence in this State, county, municipality, precinct, ward, or other election district from which that person has removed, notwithstanding that person may entertain an intention to return at some future time.

- (6) If a person goes into another state, county, municipality, precinct, ward, or other election district, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, that person shall be considered to have lost residence in that State, county, municipality, precinct, ward, or other election district from which that person removed.
- (7) School teachers who remove to a county, municipality, precinct, ward, or other election district in this State for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live where their parents or other relatives reside in this State and who do not have the intention of becoming residents of the county, municipality, precinct, ward, or other election district to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county, municipality, precinct, ward, or other election district in which their parents or other relatives reside.
- (8) If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

- (9) If a person removes to a county, municipality, precinct, ward, or other election district to engage in the service of the State government, that person shall not be considered to have lost residence in the county, municipality, precinct, ward, or other election district from which that person removed, unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.
- (9a) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change of residence.
- (10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.
- (11) So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law.

### Reynolds v. Lloyd Cotton Mills (1919)

"... The presumption of law being that the domicile of origin subsists until a change of domicile is proved, the onus of proving the change is on the party alleging it, and the onus is not discharged by merely proving residence in another place, which is not inconsistent with an intention to return to the original domicile. Reynolds v. Lloyd Cotton Mills, 177 N.C. 412 (1919)

### Owens v. Chaplin (1948)

To legally change a domicile, there must be an actual abandonment of the first domicile with the intent not to return to it, and the acquisition of a new domicile by actual residence at another place with the intent to make that new place a permanent home. Owens v. Chaplin, 228 NC 705, 47 SE2d 12 (1948).

# Hall v. Wake County Board of Elections (1972)

In the North Carolina Constitution (Section VI, § 2), it is required that one be a resident of the State and the electoral district one is voting in. The term, "residence", as used in our constitution, is synonymous with "domicile". Residence and domicile are not interchangeable terms. A person may have an actual abode (residence) in one place, and his permanent established home (domicile) in another. A domicile is the place to which the person intends to return. The law requires all persons to have only one domicile for voting purposes. Hall v. Wake County Bd. Of Elections, 280 NC 600, 187 SE2d 52 (1972).

## Lloyd v. Babb (1979)

A person has domicile for voting purposes at a given place if he/she 1) has abandoned his prior home and he is residing elsewhere; and 2) has a present intention to make that place his home, and 3) has no intention presently to leave that place. Lloyd v. Babb, 296 NC 416, 251 SE2d 843 (1979).

# The Farnsworth Case & Change of Domicile (1994)

- To establish a change in domicile, a person must show: (1) an actual abandonment of the first domicile, coupled with an intention not to return to it; (2) the acquisition of a new domicile by actual residence; and (3) the intent of making the newer residence a permanent home. Farnsworth v. Jones, 112 N.C. App 182, 187 (1994)
- A person who lives in a place for a limited purpose, with the intent of leaving when the purpose has been accomplished is a 'mere sojourner...Where someone retains his original home with all its incidental privileges and rights, there is no change in domicile. Farnsworth at 186.

#### Evidence of Domicile

 "The determination of domicile depends upon no one fact or combination of circumstances, but upon the whole, taken together, showing a preponderance of evidence in favor of some particular place of domicile. A person's own testimony regarding his intention with respect to acquiring or retaining a domicile is not conclusive; such testimony is to be accepted with considerable reserve, even though no suspicion may be entertained of the truthfulness of the witness...Conduct is of greater evidential value than declarations. Declarations as to an intention to acquire a domicile are of slight weight when they are in conflict with the facts." Hall v. Board of Elections, 280 N.C. 600, 609 (1972)

## Weigh all the evidence

